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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

STEPHEN WINDHAM and
PAULA WINDHAM,

Plaintiffs,

vs.

GENERAL ELECTRIC COMPANY, CBS
CORPORATION (FKA VIACOM INC.,
FKA WESTINGHOUSE ELECTRIC
CORPORATION), FOSTER WHEELER
LLC (FKA FOSTER WHEELER
CORPORATION), AIR & LIQUID
SYSTEMS CORP., ARMSTRONG
INTERNATIONAL, INC.,

Defendants.

No. _____

COMPLAINT FOR ASBESTOS
PERSONAL INJURY/ PRODUCTS
LIABILITY/ LOSS OF CONSORTIUM;
DEMAND FOR JURY TRIAL

I.

PARTIES

1. Plaintiff in this action, STEPHEN WINDHAM, has sustained asbestos-related lung injuries as a result of his inhalation of asbestos fibers through his occupational exposure to asbestos. Plaintiff, PAULA WINDHAM, has sustained loss of consortium as set forth in the Third Cause of Action.

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4. All of Plaintiffs' claims arise out of repeated exposure to asbestos-containing products manufactured, distributed, and/or sold by defendants and supplied to, installed and/or maintained by defendants at Plaintiff STEPHEN WINDHAM's worksites, over a period of years, caused from release of toxic asbestos fibers and subsequent inhalation by the Plaintiff STEPHEN WINDHAM, resulting in cumulative, progressive, incurable lung diseases.

6. As used herein, Plaintiff shall mean the above-captioned asbestos-injured Plaintiff
STEPHEN WINDHAM.

7. Plaintiffs are informed and believe, and thereon allege that at all times herein mentioned, Defendants were and are corporations, partnerships, unincorporated associations, sole proprietorships and/or other business entities organized and existing under and by virtue of the laws of the State of California, or the laws of some other state or foreign jurisdiction, and that said defendants, and each of them, were and are authorized to do and are doing business in the State of California, and that said defendants have regularly conducted business in the County of San Francisco, State of California.

JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT

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Defendants are each corporations incorporated under the laws of and having its principal places of business in the following States:

DEFENDANT	STATE
GENERAL ELECTRIC COMPANY	New York/Connecticut
CBS CORPORATION (FKA VIACOM INC., FKA WESTINGHOUSE ELECTRIC CORPORATION)	Delaware/New York
FOSTER WHEELER LLC (FKA FOSTER WHEELER CORPORATION)	Delaware/New Jersey
AIR & LIQUID SYSTEMS CORP.	Pennsylvania
ARMSTRONG INTERNATIONAL, INC.	Michigan

This Court has original jurisdiction under 28 U.S.C. § 1332, in that it is a civil action between citizens of different states in which the matter in controversy exceeds, exclusive of costs and interest, seventy-five thousand dollars.

9. Venue / Intradistrict Assignment. Venue is proper in the Northern District of California and assignment to the San Francisco Division of said district is proper as a substantial part of the events or omissions which give rise to the claims asserted by Plaintiff herein occurred within the County of San Francisco, California, and Defendants are subject to personal jurisdiction in this district at the time the action is commenced.

III.

CAUSES OF ACTION

FIRST CAUSE OF ACTION (Negligence)

PLAINTIFF STEPHEN WINDHAM COMPLAINS OF DEFENDANTS GENERAL ELECTRIC COMPANY, CBS CORPORATION (FKA VIACOM INC., FKA WESTINGHOUSE ELECTRIC CORPORATION), FOSTER WHEELER LLC (FKA FOSTER WHEELER CORPORATION), AIR & LIQUID SYSTEMS CORP., ARMSTRONG INTERNATIONAL, INC., THEIR "ALTERNATE ENTITIES," AND EACH OF THEM, AND FOR A CAUSE OF ACTION FOR NEGLIGENCE ALLEGES:

10. At all times herein mentioned, each of the named defendants was the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, holding company, affiliate, venturer, co-venturer, subsidiary, wholly or partially owned by, or the whole or partial owner of or member in an entity researching, studying, manufacturing, fabricating, designing, modifying, labeling, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, testing, authorizing, approving, certifying, facilitating, promoting, representing, endorsing servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging, specifying, requiring, mandating, or otherwise directing and/or facilitating the use of, or advertising a certain product, namely asbestos, and/or other products containing asbestos. Said entities shall hereinafter collectively be called ALTERNATE ENTITIES. Each of the herein named defendants is liable for the tortious conduct of each successor, successor in business, successor in product line or a portion thereof, assign, predecessor in product line or a portion thereof, parent, holding company, affiliate, venturer, co-venturer, subsidiary, whole or partial owner, or wholly or partially owned entity, or entity that it was a member of, or funded, that researched, studied, manufactured, fabricated, designed, modified, labeled, assembled, distributed, leased, bought, offered for sale, supplied, sold, inspected, serviced, installed, contracted for installation, repaired, marketed, warranted, rebranded, manufactured for others and advertised a certain product, namely asbestos, and other products containing asbestos. The following defendants, and each of them, are liable for the acts of each and every ALTERNATE ENTITY, and each of them, in that there has been a virtual destruction of Plaintiff's remedy against each such ALTERNATE ENTITY; defendants, and each of them, have acquired the assets, product line, or a portion thereof, of each such ALTERNATE ENTITY; defendants, and each of them, caused the destruction of Plaintiff's remedy against each such ALTERNATE ENTITY; each such defendant has the ability to assume the risk-spreading role of each such ALTERNATE ENTITY; and that each such defendant enjoys the goodwill originally attached to each such ALTERNATE ENTITY:

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DEFENDANTALTERNATE ENTITY

FOSTER WHEELER LLC

FOSTER WHEELER CORPORATION

AIR & LIQUID SYSTEMS CORP.

BUFFALO PUMPS, INC.

GENERAL ELECTRIC COMPANY

MATTERN X-RAY
 HOTPOINT ELECTRIC APPLIANCE COMPANY LIMITED
 TRUMBULL ELECTRIC MANUFACTURING COMPANY
 G E INDUSTRIAL SYSTEMS
 CURTIS TURBINES
 PARSONS TURBINES
 GENERAL ELECTRIC JET ENGINES
 HOTPOINT, INC.
 GENERAL ELECTRIC SUPPLY CORPORATION

CBS CORPORATION (F/K/A VIACOM
 INC., F/K/A WESTINGHOUSE
 ELECTRIC CORPORATION)

VIACOM, INC.
 CBS CORPORATION
 WESTINGHOUSE ELECTRIC CORPORATION
 WESTINGHOUSE ELECTRIC AND
 MANUFACTURING COMPANY
 B.F. STURTEVANT
 KPIX TELEVISION STATION
 PARAMOUNT COMMUNICATIONS, INC
 GULF & WESTERN INDUSTRIES, INC.
 NORTH & JUDD MANUFACTURING COMPANY

ARMSTRONG INTERNATIONAL, INC.

ARMSTRONG MACHINE WORKS, INC.

11. At all times herein mentioned, defendants, their ALTERNATE ENTITIES, and each of them, were and are engaged in the business of researching, manufacturing, fabricating, designing, modifying, labeling, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, endorsing, testing, authorizing, approving, certifying, facilitating, promoting, representing, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging, specifying, requiring, mandating, or otherwise directing and/or facilitating the use of, or advertising a certain product, namely asbestos and other products containing asbestos.

12. At all times herein mentioned, defendants, their ALTERNATE ENTITIES and each of them, singularly and jointly, negligently, and carelessly researched, manufactured, fabricated, designed, modified, tested or failed to test, abated or failed to abate, warned or failed to warn of the health hazards, labeled, assembled, distributed, leased, bought, offered for sale, supplied, sold, inspected, serviced, authorized, approved, certified, facilitated, promoted,

1 installed, represented, endorsed, contracted for installation of, repaired, marketed, warranted,
2 rebranded, manufactured for others, packaged and advertised, a certain product, namely asbestos,
3 and other products containing asbestos, in that said products caused personal injuries to users,
4 consumers, workers, bystanders and others, including the Plaintiff herein, (hereinafter
5 collectively called "exposed persons"), while being used in a manner that was reasonably
6 foreseeable, thereby rendering said products hazardous, unsafe and dangerous for use by
7 "exposed persons".

8 13. Defendants, their ALTERNATE ENTITIES, and each of them, had a duty to
9 exercise due care in the pursuance of the activities mentioned above and defendants, and each of
10 them, breached said duty of due care.

11 14. Defendants, their ALTERNATE ENTITIES and each of them, knew, or should
12 have known, and intended that the aforementioned asbestos and products containing asbestos and
13 related products and equipment, would be transported by truck, rail, ship, and other common
14 carriers, that in the shipping process the products would break, crumble, or be otherwise
15 damaged; and/or that such products would be used for insulation, construction, plastering,
16 fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not
17 limited to unpacking, preparing, using, sawing, drilling, chipping, hammering, scraping, sanding,
18 breaking, removing, maintaining, inspecting, "rip-out", and other manipulation, resulting in the
19 release of airborne asbestos fibers, and that through such foreseeable use and/or handling
20 "exposed persons", including Plaintiff herein, would use or be in proximity to and exposed to
21 said asbestos fibers, which contaminated the packaging, products, environment, and clothing of
22 persons working in proximity to said products, directly or through reentrainment.

23 15. Plaintiff has used, handled, or been otherwise exposed to asbestos and asbestos-
24 containing products referred to herein in a manner that was reasonably foreseeable. Plaintiff's
25 exposure to asbestos and asbestos-containing products is on current information as set forth at
26 various locations and circumstances in **Exhibit A**, attached to Plaintiff's complaint and
27 incorporated by reference herein.

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1 16. As a direct and proximate result of the acts, omissions, and conduct of the
2 defendants, their ALTERNATE ENTITIES, and each of them, as aforesaid, Plaintiff's exposure
3 to asbestos and asbestos-containing products caused severe and permanent injury, damage, loss,
4 or harm to the Plaintiff as set forth in **Exhibit A**, attached to Plaintiff's complaint and
5 incorporated by reference herein.

6 17. Plaintiff is informed and believes, and thereon alleges, that progressive lung
7 disease, cancer, and other serious diseases are caused by inhalation or ingestion of asbestos fibers
8 without perceptible trauma and that said injury, damage, loss, or harm results from exposure to
9 asbestos and asbestos-containing products over a period of time.

10 18. Plaintiff suffers from a condition related to exposure to asbestos and asbestos-
11 containing products. Plaintiff was not aware at the time of exposure that asbestos or asbestos-
12 containing products presented risk of injury and/or disease.

13 19. As a direct and proximate result of the aforesaid conduct of defendants, their
14 ALTERNATE ENTITIES, and each of them, Plaintiff has suffered, and continue to suffer,
15 permanent injuries and/or future increased risk of injuries to their persons, body and health,
16 including, but not limited to, asbestosis, other lung damage, and cancer, and the mental and
17 emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to
18 Plaintiff's general damage.

19 20. As a direct and proximate result of the aforesaid conduct of the defendants, their
20 "alternate entities," and each of them, Plaintiff has incurred, is presently incurring, and will incur
21 in the future, liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays
22 and other medical treatment, the true and exact amount thereof being unknown to Plaintiff at this
23 time, and Plaintiff prays leave to amend this complaint accordingly when the true and exact cost
24 thereof is ascertained.

25 21. As a further direct and proximate result of the said conduct of the defendants,
26 their "alternate entities," and each of them, Plaintiff has incurred pecuniary losses, the full nature
27 and extent of which are not yet known to Plaintiff; and leave is requested to amend this
28 complaint to conform to proof at the time of trial.

22. Defendants, their ALTERNATE ENTITIES, and each of them, and their officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should have known of, each of the acts set forth herein.

23. Defendants, their "alternate entities," and each of them, are liable for the fraudulent, oppressive, and malicious acts of their ALTERNATE ENTITIES, and each of them, and each defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should have known of, the acts of each of their ALTERNATE ENTITIES as set forth herein.

23. The herein-described conduct of said defendants listed in this paragraph below, their "alternate entities," and each of them, was and is willful, malicious, fraudulent, outrageous and in conscious disregard and indifference to the safety and health of "exposed persons." Plaintiff, for the sake of example and by way of punishing said defendants, seeks punitive damages according to proof against the following defendant only: FOSTER WHEELER LLC (FKA FOSTER WHEELER CORPORATION).

WHEREFORE, Plaintiff prays judgment against defendants, their "alternate entities," and each of them, as hereinafter set forth.

SECOND CAUSE OF ACTION
(Products Liability)

AS AND FOR A SECOND, SEPARATE, FURTHER AND DISTINCT CAUSE OF ACTION FOR PRODUCTS LIABILITY, PLAINTIFF STEPHEN WINDHAM COMPLAINS OF DEFENDANTS GENERAL ELECTRIC COMPANY, CBS CORPORATION (FKA VIACOM INC., FKA WESTINGHOUSE ELECTRIC CORPORATION), FOSTER WHEELER LLC (FKA FOSTER WHEELER CORPORATION), AIR & LIQUID SYSTEMS CORP., ARMSTRONG INTERNATIONAL, INC., THEIR "ALTERNATE ENTITIES," AND EACH OF THEM, AS FOLLOWS:

24. Plaintiff incorporates herein by reference, as though fully set forth herein, the allegations contained in each paragraph of the First Cause of Action herein.

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1 25. Defendants, their ALTERNATE ENTITIES, and each of them, knew and intended
2 that the above-referenced asbestos and asbestos-containing products would be used by the
3 purchaser or user without inspection for defects therein or in any of their component parts and
4 without knowledge of the hazards involved in such use.

5 26. Said asbestos and asbestos-containing products were defective and unsafe for their
6 intended purpose in that the inhalation of asbestos fibers causes serious disease and/or death.
7 The defect existed in the said products at the time they left the possession of defendants, their
8 "alternate entities," and each of them. Said products did, in fact, cause personal injuries,
9 including asbestosis, other lung damage, and cancer to "exposed persons", including Plaintiff
10 herein, while being used in a reasonably foreseeable manner, thereby rendering the same
11 defective, unsafe and dangerous for use.

12 27. "Exposed persons" did not know of the substantial danger of using said products.
13 Said dangers were not readily recognizable by "exposed persons." Said defendants, their
14 ALTERNATE ENTITIES, and each of them, further failed to adequately warn of the risks to
15 which Plaintiff and others similarly situated were exposed.

16 28. In researching, manufacturing, fabricating, designing, modifying, testing or failing
17 to test, warning or failing to warn, labeling, assembling, distributing, leasing, buying, offering for
18 sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing,
19 marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos
20 and asbestos-containing products, defendants, their ALTERNATE ENTITIES, and each of them,
21 did so with conscious disregard for the safety of "exposed persons" who came in contact with
22 said asbestos and asbestos-containing products, in that said defendants, their ALTERNATE
23 ENTITIES, and each of them, had prior knowledge that there was a substantial risk of injury or
24 death resulting from exposure to asbestos or asbestos-containing products, including, but not
25 limited to, asbestosis, other lung damages and cancer. Said knowledge was obtained, in part,
26 from scientific studies performed by, at the request of, or with the assistance of, said defendants,
27 their ALTERNATE ENTITIES, and each of them, and which knowledge was obtained by said
28 defendants, their ALTERNATE ENTITIES, and each of them on or before 1930, and thereafter.

1 29. On or before 1930, and thereafter, said defendants, their ALTERNATE
2 ENTITIES and each of them, were aware that members of the general public and other "exposed
3 persons", who would come in contact with their asbestos and asbestos-containing products, had
4 no knowledge or information indicating that asbestos or asbestos-containing products could
5 cause injury, and said defendants, their ALTERNATE ENTITIES, and each of them, knew that
6 members of the general public and other "exposed persons", who came in contact with asbestos
7 and asbestos-containing products, would assume, and in fact did assume, that exposure to
8 asbestos and asbestos-containing products was safe, when in fact said exposure was extremely
9 hazardous to health and human life.

10 30. With said knowledge, said defendants, their ALTERNATE ENTITIES, and each
11 of them, opted to research, manufacture, fabricate, design, modify, label, assemble, distribute,
12 lease, buy, offer for sale, supply, sell, inspect, service, install, contract for installation, repair,
13 market, warrant, rebrand, manufacture for others, package and advertise said asbestos and
14 asbestos-containing products without attempting to protect "exposed persons" from or warn
15 "exposed persons" of, the high risk of injury or death resulting from exposure to asbestos and
16 asbestos-containing products. Rather than attempting to protect "exposed persons" from, or warn
17 "exposed persons" of, the high risk of injury or death resulting from exposure to asbestos and
18 asbestos-containing products, defendants, their ALTERNATE ENTITIES, and each of them,
19 intentionally failed to reveal their knowledge of said risk, and consciously and actively concealed
20 and suppressed said knowledge from "exposed persons" and members of the general public, thus
21 impliedly representing to "exposed persons" and members of the general public that asbestos and
22 asbestos-containing products were safe for all reasonably foreseeable uses. Defendants, their
23 ALTERNATE ENTITIES, and each of them, engaged in this conduct and made these implied
24 representations with the knowledge of the falsity of said implied representations.

25 31. The above-referenced conduct of said defendants, their ALTERNATE ENTITIES,
26 and each of them, was motivated by the financial interest of said defendants, their ALTERNATE
27 ENTITIES, and each of them, in the continuing, uninterrupted research, design, modification,
28 manufacture, fabrication, labeling, assembly, distribution, lease, purchase, offer for sale, supply,

1 sale, inspection, installation, contracting for installation, repair, marketing, warranting,
2 rebranding, manufacturing for others, packaging and advertising of asbestos and asbestos-
3 containing products. In pursuance of said financial motivation, said defendants, their
4 ALTERNATE ENTITIES, and each of them, consciously disregarded the safety of "exposed
5 persons" and in fact were consciously willing and intended to permit asbestos and asbestos-
6 containing products to cause injury to "exposed persons" and induced persons to work with and
7 be exposed thereto, including Plaintiff.

8 32. Plaintiff alleges that the aforementioned defendants, their ALTERNATE
9 ENTITIES, and each of them impliedly warranted their asbestos and asbestos-containing
10 products to be safe for their intended use but that their asbestos and asbestos-containing products,
11 created an unreasonable risk of bodily harm to exposed persons.

12 33. Plaintiff further alleges his injuries are a result of cumulative exposure to asbestos
13 and various asbestos-containing products manufactured, fabricated, inadequately researched,
14 designed, modified, inadequately tested, labeled, assembled, distributed, leased, bought, offered
15 for sale, supplied, sold, inspected, serviced, installed, contracted for installation, repaired,
16 marketed, warranted, rebranded, manufactured for others, packaged and advertised by the
17 aforementioned defendants, their ALTERNATE ENTITIES, and each of them and that Plaintiff
18 cannot identify precisely which asbestos or asbestos-containing products caused the injuries
19 complained of herein.

20 34. Plaintiff relied upon defendants', their "alternate entities'", and each of their
21 representations, lack of warnings, and implied warranties of fitness of asbestos and their
22 asbestos-containing products. As a direct, foreseeable and proximate result thereof, Plaintiff has
23 been injured permanently as alleged herein.

24 35. As a direct and proximate result of the actions and conduct outlined herein,
25 Plaintiff has suffered the injuries and damages previously alleged.

26 WHEREFORE, Plaintiff prays judgment against defendants, their ALTERNATE
27 ENTITIES, and each of them, as hereinafter set forth.

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THIRD CAUSE OF ACTION
(Loss of Consortium)

AS AND FOR A THIRD, SEPARATE, FURTHER AND DISTINCT CAUSE OF ACTION FOR LOSS OF CONSORTIUM, PLAINTIFF PAULA WINDHAM COMPLAINS OF DEFENDANTS GENERAL ELECTRIC COMPANY, CBS CORPORATION (FKA VIACOM INC., FKA WESTINGHOUSE ELECTRIC CORPORATION), FOSTER WHEELER LLC (FKA FOSTER WHEELER CORPORATION), AIR & LIQUID SYSTEMS CORP., ARMSTRONG INTERNATIONAL, INC., THEIR "ALTERNATE ENTITIES," AND EACH OF THEM, AND ALLEGES AS FOLLOWS:

36. Plaintiffs incorporate by reference each and every paragraph of the First through Second Causes of Action herein.

37. Plaintiffs STEPHEN WINDHAM and PAULA WINDHAM were married on December 1, 2001, and at all times relevant to this action were, and are now, husband and wife.

38. Prior to Plaintiff STEPHEN WINDHAM's injuries as alleged, he was able and did perform duties as a spouse. Subsequent to the injuries and as a proximate result thereof, STEPHEN WINDHAM has been unable to perform the necessary duties as a spouse and the work and service usually performed in the care, maintenance and management of the family home, and he will be unable to perform such work, service and duties in the future. As a proximate result thereof, Plaintiff PAULA WINDHAM has been permanently deprived and will be deprived of the consortium of her spouse, including the performance of duties, all to her damages, in an amount presently unknown but which will be proved at the time of trial.

39. Plaintiff's discovery of the cause of her loss of consortium, as herein alleged, first occurred within one year of the date this complaint was filed.

40. As a direct and proximate result of the acts of defendants, their "alternate entities," and each of them, and the severe injuries caused thereby to Plaintiff STEPHEN WINDHAM as set forth in this complaint, Plaintiff PAULA WINDHAM has suffered, and for a long period of time will continue to suffer loss of consortium, including but not by way of limitation, loss of services, marital relations, society, comfort, companionship, love and affection of said spouse,

1 and has suffered severe mental and emotional distress and general nervousness as a result
2 thereof.

3 WHEREFORE, Plaintiffs pray judgment against defendants, their ALTERNATE
4 ENTITIES, and each of them, as hereinafter set forth.

5 **IV.**

6 **PRAYER**

7 WHEREFORE, Plaintiffs pray judgment against defendants, their ALTERNATE
8 ENTITIES, and each of them in an amount to be proved at trial, as follows:

9 Plaintiff STEPHEN WINDHAM:

- 10 (a) For Plaintiff's general damages according to proof;
11 (b) For Plaintiff's loss of income, wages and earning potential according to proof;
12 (c) For Plaintiff's medical and related expenses according to proof;

13 Plaintiff PAULA WINDHAM:

- 14 (d) For Plaintiff's damages for loss of consortium according to proof;

15 Plaintiffs STEPHEN WINDHAM and PAULA WINDHAM:

- 16 (e) For Plaintiffs' cost of suit herein;
17 (f) For exemplary or punitive damages according to proof against defendant FOSTER
18 WHEELER LLC (FKA FOSTER WHEELER CORPORATION), only;
19 (g) For damages for fraud according to proof; and
20 (h) For such other and further relief as the Court may deem just and proper, including
21 costs and prejudgment interest.

22
23 Dated: 8/25/14

BRAYTON ♦ PURCELL LLP

24
25 By: 
26 David R. Donadio, Esq., S.B. #154436
27 Attorneys for Plaintiffs
28

JURY DEMAND

Plaintiffs hereby demand trial by jury of all issues of this cause.

Dated: 8/25/14

BRAYTON ♦ PURCELL LLP

By: 

David R. Donadio, Esq., S.B. #154436
Attorneys for Plaintiffs